

§ 2200.204 Discontinuance of E-Z Trial.

(a) *Procedure.* If it becomes apparent at any time that a case is not appropriate for E-Z Trial, the Judge assigned to the case may, upon motion by any party or upon the Judge's own motion, discontinue E-Z Trial and order the case to continue under conventional rules. Before discontinuing E-Z Trial, the Judge will consult with the Chief Judge.

(b) *Party motion.* At any time during the proceedings any party may request that the E-Z Trial be discontinued and that the matter continue under conventional procedures. A motion to discontinue must be in writing and explain why the case is inappropriate for E-Z Trial. All other parties will have seven days from the filing of the motion to state their agreement or disagreement and their reasons. Joint motions to return a case to conventional proceedings shall be granted by the Judge and do not require a showing of good cause.

(c) *Ruling.* If E-Z Trial is discontinued, the Judge may issue such orders as are necessary for an orderly continuation under conventional rules.

§ 2200.205 Filing of pleadings.

(a) *Complaint and answer.* Once a case is designated for E-Z Trial, the complaint and answer requirements are suspended. If the Secretary has filed a complaint under § 2200.34(a), a response to a petition under § 2200.37(d)(5), or a response to an employee contest under § 2200.38(a), and if E-Z Trial has been ordered, no response to these documents will be required.

(b) *Motions.* A primary purpose of E-Z Trials is to eliminate, as much as possible, motions and similar documents. A motion will not be viewed favorably if the subject of the motion has not been first discussed among the parties.

§ 2200.206 Disclosure of information.

(a) *Disclosure to employer.* (1) Within 12 working days after a case is designated for E-Z Trial, the Secretary shall provide the employer, free of charge, copies of the narrative (Form OSHA 1-A) and the worksheet (Form OSHA 1-B), or their equivalents.

(2) Within 30 calendar days after a case is designated for E-Z Trial, the Secretary shall provide the employer with reproductions of any photographs or videotapes that the Secretary anticipates using at the hearing.

(3) Within 30 calendar days after a case is designated for E-Z Trial, the Secretary shall provide to the employer any exculpatory evidence in the Secretary's possession.

(4) The Judge shall act expeditiously on any claim by the employer that the Secretary improperly withheld or redacted any portion of the documents, photographs, or videotapes on the grounds of confidentiality or privilege.

(b) *Disclosure to the Secretary.* Where the employer raises an affirmative defense, the presiding Judge shall order the employer to disclose to the Secretary such documents relevant to the affirmative defense as the Judge deems appropriate.

[60 FR 41809, Aug. 14, 1995, as amended at 62 FR 40934, July 31, 1997]

§ 2200.207 Pre-hearing conference.

(a) *When held.* As early as practicable after the employer has received the documents set forth in § 2200.206(a)(1), the presiding Judge will order and conduct a pre-hearing conference. At the discretion of the Judge, the pre-hearing conference may be held in person, or by telephone or electronic means.

(b) *Content.* At the pre-hearing conference, the parties will discuss the following: settlement of the case; the narrowing of issues; an agreed statement of issues and facts; defenses; witnesses and exhibits; motions; and any other pertinent matter. Except under extraordinary circumstances, any affirmative defenses not raised at the pre-hearing conference may not be raised later. At the conclusion of the conference, the Judge will issue an order setting forth any agreements reached by the parties and will specify in the order the issues to be addressed by the parties at the hearing.

[60 FR 41809, Aug. 14, 1995, as amended at 62 FR 40934, July 31, 1997]

§ 2200.208 Discovery.

Discovery, including requests for admissions, will only be allowed under